

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ERNEST H. STEINBACH JR.**  
Claimant

VS.

**U.S.D. #308  
YMCA**

Respondents

AND

**KASB WORKERS COMP. FUND  
ST. PAUL/TRAVELERS INS CO.**  
Insurance Carriers

Docket No. 1,021,541

**ORDER**

Claimant requests review of the April 14, 2005 preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

**ISSUES**

The Administrative Law Judge (ALJ) found claimant's accidental injuries occurred while he was engaged in his employment with the YMCA.

The claimant requests review of whether his accidental injury arose out of and in the course of employment with both employers, U.S.D. #308 and the YMCA. Claimant argues that he was a dual employee of both U.S.D. #308 and the YMCA at the time of his injury. Consequently, claimant argues the liability for his compensation should be shared by both employers.

Respondent U.S.D. #308 argues the ALJ's Order should be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

At the preliminary hearing the respondent, YMCA, stipulated that claimant, a part-time employee, suffered accidental injury arising out of and in the course of his employment on January 15, 2005. The litigated issue was whether at the time of his accidental injury the claimant was also performing work for the respondent U.S.D. # 308 and was engaged in dual employment for both respondents.

The claimant was employed as the head custodian and janitor for respondent at a middle school in Hutchinson. As a janitor for respondent, U.S.D. #308, the claimant worked a 40-hour week Monday through Friday.

Claimant also was a part-time employee of the YMCA. The seasonal part-time job with the YMCA required claimant to work on Saturdays, unlocking the doors of a school gymnasium and preparing the facility for the YMCA's sponsored Saturday youth basketball league games. After the games were over the claimant would clean up and then lock the building. He was paid by the YMCA.

On Saturday, January 15, 2005, after he was finished for the day, the claimant was checking to see if one of the doors to the gymnasium was locked when he slipped and fell breaking his right leg. This occurred at an elementary school which is not the school claimant worked at in his job with respondent, U.S.D. #308. Claimant agreed that no one from the school district directs how he performs his duties on Saturday while working for the YMCA. But he did note that on one occasion an elementary school principal had complained to him that the bathrooms had been vandalized and not properly cleaned after her school had been used for YMCA basketball games.

At the conclusion of the preliminary hearing the ALJ stated:

THE COURT: All right. Thank you. I do not find a dual employment. I find that claimant's actions on January 15, 2005, were exclusively in pursuit of his employment with the YMCA and not in furtherance of his employment through USD 308. He was neither paid by USD 308 nor supervised by USD 308 and not acting under that contract or under the control of the USD 308 at the time of his accident. He was fulfilling his obligation to the YMCA to open up the building, monitor the building and close the building at the end of the activity, and he was ensuring that, in fact, the building was closed consistent with his obligations to the Y at the time that he fell and injured his leg.

. . .

Claimant was clearly - - he's at a different building than he's assigned, to perform duties differently than what he was normally assigned to. He was doing them on a day and time when he wasn't ordinarily expected to be working and he wasn't being

paid by the school district. This clearly appears to this Court to be exclusively within the ambit of the YMCA employment.<sup>1</sup>

Based upon the record compiled to date, the Board agrees and affirms.

**WHEREFORE**, it is the finding of the Board that the Order of Administrative Law Judge Bruce E. Moore dated April 14, 2005, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June 2005.

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BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant  
Anton Andersen, Attorney for U.S.D. #308 and KASB W.C. Fund  
William L. Townsley, Attorney for YMCA and St. Paul/Travelers Ins. Co.  
Bruce E. Moore, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>1</sup> P.H. Trans. at 52 & 54.